



MUR 4993

"The People's Candidate"

March 30, 2000

General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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COMMISSION
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Complainant: Phil Berg

Former State Labor Secretary Tom Foley (complaint respondent) who was once responsible for enforcing laws and labor laws is now in complete violation of those very laws. He has not followed the law regarding campaign contributions or labor laws as an employer for his own campaign staff.

First, Tom Foley has been hired by the law firm of Obermayer, Rebmann, Maxwell & Hippel since he left the Federal Government in 1999, but has not been doing billable work, is a non-working employee and/or is just being paid to be a candidate for the firm. This a direct violation of many campaign contribution regulations, including but not limited to:

- (a) Obermayer is a corporation and one cannot accept political contributions from a corporation;
- (b) The law firm of Obermayer has a Political Action Committee (P.A.C.) which is by law limited to giving a \$5,000 contribution to a candidate, an amount which they have greatly exceeded at this time by the firm paying a salary to Foley;
- (c) The Obermayer firm has exceeded its lawful contribution limits; and
- (d) The Obermayer firm has provided campaign office space for which they have not been compensated, thus, another violation.

Next, Foley has not paid any income or social security taxes for his employees. The Federal Election Commission Campaign Guide for Congressional Candidates and Committees states "Campaigns should be aware that they have to comply with federal and state laws on income tax." In the period covering July 1, 1999 to December 31, 1999, Foley had a total of \$67,099 in employee salary and paid nothing to the IRS. In contrast, State Senator Allyson Schwartz spent \$89,902 on staff and paid \$8,729 in taxes and Congressman Ron Klink spent \$54,367 on staff and \$17,965.96 in payments to the IRS.

Thirdly, Foley has not paid any Pennsylvania Worker's Compensation fees. Schwartz wrote

a check for \$463 to the State Workman's Comp Fund on August 1999. Klink spent \$1,088.79 on November 1999 to pay the Pennsylvania Unemployment Comp Fund.

Fourth, Foley hires his entire staff as "independent contractors" and therefore does not pay a portion of social security, medicare, federal and state taxes. Both Schwartz and Klink use the Paychex payroll service, which automatically deducts social security, Medicare, federal and state taxes. Foley's staff, however does not meet the majority of guidelines to be deemed independent contractors. The IRS does not favor the use of independent contractors, especially since he has direct control over his employees, and employers who misclassify workers may be subject to back taxes, interest and penalties.

Tom Foley's most recent FEC filing January 1st to March 15th shows the following employees and no benefit payments:

Kimberly Datz	\$ 3,513.00
Andy Hahn	\$14,000.00
Melissa Hardoby	\$ 6,714.19
Billy Linville	\$10,500.00
Jack MacMillian	\$ 9,375.00
Eric Marchbein	\$ 4,500.00
Josh Morrow	\$ 8,250.00

Additionally, Tom Foley's FEC report shows no disbursement for postage even though weekly letters/memos were sent to Democratic Party Officials throughout the state. Numerous fund raising mailings were also mailed.

Tom Foley's FEC report for the six-month period ending 12-31-99 shows no disbursement for rent for the Harrisburg and Pittsburgh offices. Even though employees are listed for both cities. Wiring for phones is also shown for these sites. No in-kind contributions are shown for the same.

Additionally, Foley's FEC report for the period of July 1, 1999 to December 31, 1999 only shows two months of phone payments while records show employees started in both the Harrisburg and Pittsburgh offices during the month of August 1999.

I, Phil Berg, Democratic Candidate for the U.S. Senate in the Commonwealth of Pennsylvania, hereby files this complaint of wrongdoing with the Federal Election Commission.

Date: MARCH 30, 2000

Signed: 
PHIL BERG

Sworn To And Subscribed
Before Me This _____ Day
Of March, 2000.

